

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAWN T. BRISCOE,	§
	§ No. 316, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9805010749
Plaintiff Below-	§
Appellee.	§

Submitted: September 24, 2010

Decided: November 29, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 29th day of November 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Shawn Briscoe, filed this appeal from the Superior Court's order correcting his sentence for a violation of probation. Briscoe argues that it was error for the Superior Court to increase his sentence, *sua sponte*, without giving Briscoe notice and an opportunity to be heard in court. We find no merit to Briscoe's claims. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Briscoe pled guilty in February 2000 to one count each of third degree unlawful sexual intercourse and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced Briscoe

immediately, effective December 28, 1999 and with credit for time previously served, to a total period of thirteen years at Level V incarceration, to be suspended after serving seven years for decreasing levels of supervision. In June 2009, his probation officer filed an administrative warrant alleging Briscoe had violated his probation. A contested hearing was held and the Superior Court sentenced Briscoe for violating probation on July 31, 2009.

(3) The Superior Court's July 2009 order sentenced Briscoe to five years at Level V incarceration for violating probation. The order further provided, "Upon successful completion at supervision level 5, balance of sentence is suspended for 2 years(s) supervision level 3." Briscoe did not appeal. In April 2010, the Superior Court amended its July 2009 sentencing order. The Superior Court order again sentenced Briscoe to serve five years at Level V incarceration, but amended the order to read, "Upon successful completion at supervision level 5 **FAMILY PROBLEMS**, balance of sentence is suspended for 2 year(s) supervision level 3." Briscoe appealed the amended sentencing order arguing that the Superior Court unfairly increased his sentence without giving him notice and an opportunity to be heard. We disagree.

(4) The Superior Court's July 2009 sentencing order was ambiguous on its face. The order provided that the balance of Briscoe's sentence could be suspended for two years at Level III probation upon his "successful completion at supervision level [V]." By these terms, the sentencing order in fact required that

Briscoe complete all five years of his sentence in a Level V setting. The April 2010 amended order corrected this ambiguity by allowing Briscoe to have the balance of his Level V sentence suspended upon his successful completion of the Family Problems program. The amendment did not increase the overall length of Briscoe's sentence, as he claims. In fact, the amendment allows Briscoe to significantly reduce the length of time he serves in prison if he successfully completes the Family Problems program. The Superior Court's amended sentence merely corrected a clerical error contained in the July 2009 sentence.¹ Thus, Briscoe was not entitled to notice and an opportunity to be heard before the Superior Court corrected its sentencing order.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹ Del. Super. Crim. R. 36 (2010).

² *Price v. State*, 2009 WL 436184 (Del. Feb. 23, 2009).